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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,165	08/22/2003	Volker Blank	H 5188 PCT/US	1890
423	7590	08/25/2004	EXAMINER	
HENKEL CORPORATION THE TRIAD, SUITE 200 2200 RENAISSANCE BLVD. GULPH MILLS, PA 19406			DOUYON, LORNA M	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/647,165

Applicant(s)

BLANK ET AL.

Examiner

Lorna M. Douyon

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claim Rejections - 35 USC § 112

1. Claims 11-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 is indefinite because the minimum amount of paraffin wax or a mixture of paraffin wax and silicone oil which is 15% is outside the scope of the minimum amount of the same component(s) in claim 1 which is 16%. In addition, the ingredient whose weight is "not more than 80% by weight" in the last line is not identified.

Claim 14 is indefinite because it is not clear whether other limitations are inadvertently omitted, or the claim just lacks a period.

Claims 12-13, 15-24, being dependent directly or indirectly upon claim 11, are rejected as well.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-4, 6-24 and 26 are rejected under 35 U.S.C. 103(a) as being obvious over Millhoff et al. (US Patent No. 6,340,662) hereinafter "Millhoff".

The applied reference has a common assignee and inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Millholf teaches a process for the production of particulate foam regulator granules by spraying onto a solid carrier an aqueous emulsion containing 16% by weight to 70% by weight of active foam regulator based on paraffin wax and/or silicone oil, 2% by weight to 15% by weight of nonionic and/or anionic emulsifier and no more than 80% by weight of water, optionally followed by a drying step (see col. 2, line 65 to col. 3, line 3; lines 24-27). The foam regulator emulsion preferably contains 15% by weight to 60% by weight and, more particularly, 30% by weight to 50% by weight of paraffin wax or a mixture of paraffin wax and silicone oil, 1% by weight to 10% by weight and, more particularly, 3% by weight to 8% by weight of bis-fatty acid amide derived from C₂₋₇ diamines and C₁₂₋₂₂ fatty acids, 2% by weight to 15% by weight and, more particularly, 3% by weight to 10% by weight of nonionic and/or anionic emulsifier and no more than 80% by weight of water (see col. 3, lines 5-17). The paraffin wax is preferably solid at room temperature and is present in completely liquid form at 100°C (see col. 4, lines 15-17). Preferred paraffin wax mixtures have a liquid component at 40°C of at least 50% by weight and a liquid component at 60°C of at least 90% by weight (see col. 4, lines 31-35). In another embodiment, the foam regulator emulsion contains a mixture of silicone oil and paraffin wax in a ratio by weight of 2:1 to 1:100 and, more particularly, 1:1 to 1:10 (see col. 4, lines 62-65). The silicone oil is present in mixtures of paraffin wax and silicone oil in such quantities that the foam regulator emulsion prepared therefrom has a silicone oil content of 0.1% by weight to 10% by weight and, more particularly, 1% by weight to 5% by weight (see col. 4, lines 56-62). The nonionic emulsifiers which may be used include the alkoxylates of alcohols, alkylamines, vicinal diols, carboxylic acid amides containing C₈₋₂₂ having a degree of alkoxylation from 1 to 10 (see col. 5, lines 21-28). The solid carrier include powder-form polycarboxylate co-builders,

for example alkali metal citrate, solid inorganic builders such as zeolite, inorganic salts such as alkali metal carbonate and mixtures thereof (see col. 6, lines 41-62). In the process for producing particulate foam regulator granules, granulation is carried out in a granulation mixer (see col. 7, lines 39-54). Millhoff, however, fails to disclose the carrier material comprising an alkali metal carbonate and a Bronsted acid like alkali metal citrate, and their respective proportions.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have selected alkali metal carbonate and alkali metal citrate in their optimum proportions as the specific carrier material because Millhoff teaches that the carrier material can be a mixture of powder-form polycarboxylate co-builders like alkali metal citrate and inorganic salts like alkali metal carbonate, and to optimize their proportions through routine experimentation for best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

5. Claims 5 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Millhoff as applied to the above claims, and further in view of Hall et al. (US Patent No. 6,093,218), hereinafter "Hall".

Millhoff teaches the features as described above. Millhoff, however, fails to disclose sodium hydrogen sulfate or citric acid.

Hall teaches a source of acidity which include citric, sodium hydrogen sulfate or a salt thereof (see col. 9, lines 9-18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the alkali metal citrate of Millhoff with citric acid or sodium hydrogen sulfate because the substitution of art recognized equivalents is within the level of ordinary skill in the art.

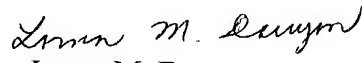
Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references are considered cumulative to or less material than those discussed above.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is (571) 272-1313. The examiner can normally be reached on Mondays-Fridays from 8:00AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Lorna M. Douyon
Primary Examiner
Art Unit 1751